IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10559 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgement ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgement ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVDAS BHANABHAI ROY - Petitioner(s)

Versus

COLLECTOR,SURAT & 3 - Respondent(s)

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Appearance :

MR RR MARSHALL for Petitioner No(s).: 1.

MR MR MENGDEY, AGP for RespondenS

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 16/06/2005

ORAL JUDGMENT

1. Learned advocate for the petitioner produces on record a copy of the order dated 2nd June 2005 passed by the Additional Secretary (Appeals), Revenue Department, Government of Gujarat. Leave to amend granted to add additional prayer challenging the said order dated 2.6.05. Permission is also

granted to amend the petition to add the grounds to challenge the said order.

2. Rule. Mr.Mengdey, learned AGP, waives service of notice of rule on behalf of the respondents. With the consent of the parties, the petition is taken up for final disposal today.

3. The controversies involved in the present petition are in narrow compass. The petitioner had initially challenged the order dated 17.5.05 passed by the Collector, Surat, by which order, the said authority was pleased to recall the land granted to the petitioner and was further pleased to order taking possession of the said land on the ground that the petitioner had breached some of the conditions of granting the land by the Government. The petitioner has challenged the said order dated 17.5.05 before the Government. However, it is his case that on account of political pressure, even while the revision application filed by the petitioner before the Government under section 211 of the Bombay Land Revenue Code was pending, the City Survey Superintendent at the instance of the Collector, Surat without waiting for even the interim injunction application being heard by the Government, proceeded to seal certain portion of the premises including shops occupied by certain tenants as also certain portion of the premises being used by the petitioner. He, therefore filed the present petition and prayed for appropriate reliefs. During the pendency of the petition, the Additional Secretary (Appeals) passed order dated 2.6.05 which has also been made subject matter of challenge in the

present petition, as noted above.

4. The case of the petitioner is that he was given the land admeasuring 3500 sq. mtrs in Olpad town of Surat District for development initially for the purpose of building a hotel which subsequently came to be modified for the duel purpose of constructing hotel as well as for the purpose of shops and offices. It is the case of the petitioner that after obtaining necessary permissions from the authorities, he has developed the land in question and is being occupied by the petitioner for the purpose of running a hotel and by the tenants for the purpose of commercial activities in shops constructed by the petitioner at the said site. It is the case of the petitioner that the petitioner has not breached any of the conditions of grant of land and the Collector had only on the count of political pressure, on frivolous grounds canceled the grant and ordered that the possession of the land should be recovered by the Government. It is further contended that the petitioner immediately filed revision against the said order before the Government. However, without waiting even for a day, the respondents proceeded to seal certain portion of the said premises causing great injury and loss to the petitioner and harassment to the occupiers.

5. Learned counsel for the petitioner has submitted that the petitioner has not committed any breach, however without prejudice to the rights and contentions of the petitioner, the petitioner is ready and willing to deposit the amount of

Rs.30,260/- which according to the authorities, the petitioner has to pay towards the land revenue and other charges. It is further contended on behalf of the petitioner that when the petitioner has invested large amount of money in developing the plot in question and when the same was occupied with proper permissions, it was unjust and unlawful on the part of the respondents to seal the premises in such a hot haste especially when the revision application filed by the petitioner against the order passed by the Collector on 17.5.05 was pending and his application for interim injunction was not yet disposed of.

6. The respondents have filed affidavit in reply and mainly contended that the petitioner has breached conditions of grant of the land in question. It is contended that the petitioner has not paid land revenue and other taxes amounting to Rs.30,259.60 ps.; that the construction was not completed within the time permitted and the kabulatnama as envisaged under condition No.6 of the order granting the land to the petitioner is also not given. From the affidavit, it appears that these are some of the main objections raised by the respondents. As noted earlier, the petitioner has undertaken to deposit an amount of Rs.30,260/- subject to his rights and contentions. Regarding other breaches, the learned counsel for the petitioner without admitting the correctness of the averments of the respondents submitted that in any case, the breaches are of minor nature and of procedural kind and are such which can be cured rather than

the ones which would entail recalling of the land by the Government especially at the stage where the petitioner has invested a huge amount of money in developing the property in question.

7. Having considered the rival submissions, it is clear that the order was passed by the Collector only on 17.5.05 recalling the land in question and canceling the grant thereof in favour of the petitioner. The petitioner immediately appealed against the same before the Government by filing revision application. Even without waiting for the outcome of the interim injunction application, the authorities proceeded to seal the premises. Subsequently, the Additional Secretary, Revenue Department rejected the interim injunction application of the petitioner. The effect of this order dated 2nd June 2005 passed by the Additional Secretary would be that while revision application filed by the petitioner is still pending, the order passed by the Collector would be implemented thereby making the revision application infructuous. I do not find any extra-ordinary reason to permit the authorities to adopt such a course. When the property in question has been in existence since quite some time now and is being occupied by the petitioner and other tenants, I do not see any reason why the respondents ought to have shown such extraordinary urgency in seeking to implement the order of cancelling the grant and sealing the premises in furtherance of implementation of the order. When the revision application filed by the petitioner is still

pending, it is proper and desirable that status qua obtaining as on the date when the Collector passed order dated 17.5.05 be maintained till the final disposal of the revision application filed by the petitioner.

8. In the result, by allowing the petition, order dated 2.6.05 passed by the Additional Secretary (Appeals), is set aside. The order dated 17.5.05 of the Collector shall stand stayed till the final outcome of the revision application filed by the petitioner before the State Government and in consequence thereof the seal put by the respondents on the premises in question shall be removed. Rule is made absolute to the above extent with no order as to costs.

Direct service.

(**Akil Kureshi, J.**)

(vjn)